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IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION ONE

THE PEOPLE,

Plaintiff and Respondent,

v.

ALISON JUNE BLOCK,

Defendant and Appellant.

B218967

(Los Angeles County
Super. Ct. No. PA056459)

APPEAL from a judgment of the Superior Court of Los Angeles County.
Graciela L. Freixes, Judge. Affirmed as modified.

Diana M. Teran, under appointment by the Court of Appeal, for Defendant and Appellant.

Edmund G. Brown Jr., Attorney General, Dane R. Gillette, Chief Assistant Attorney General, Pamela C. Hamanaka, Assistant Attorney General, Paul M. Roadarmel, Jr. and Steven D. Matthews, Deputy Attorneys General, for Plaintiff and Respondent.

Alison June Block appeals from the judgment entered upon revocation of probation granted following her plea of no contest to stalking. (Pen. Code, § 646.9, subd. (a).)¹ She contends the court imposed an unauthorized sentence by imposing a second restitution fine when it sentenced her to prison in an amount greater than the restitution fine originally imposed when it granted probation. (§ 1202.4, subd. (b).) The Attorney General contends Block forfeited the sentencing error by failing to raise it in the trial court, but if not forfeited, he asserts that the matter should be remanded to the trial court with directions to strike the improper fine. We conclude the sentencing error was not forfeited, the original restitution fine imposed under section 1202.4, subdivision (b) survived the probation revocation, and thus the second restitution fine the court imposed in a greater amount was unauthorized. We will modify the judgment by striking the second fine and, as so modified, affirm.

BACKGROUND

A felony complaint filed on April 26, 2007, charged Block with two counts of making criminal threats (§ 422), and one count of stalking. (§ 646.9, subd. (a).) The criminal charges involved a coach with whom Block had become obsessed while a student at Santa Monica City College. The pre-plea probation report stated that Block had been diagnosed with Asperger syndrome as a child,² suffered from mental illness, and refused to take medications.

On May 25, 2007, Block pleaded no contest to the stalking charge and the remaining charges were dismissed. The court suspended imposition of sentence and granted her five years' formal probation. Conditions of probation included: refraining

¹ Further unmarked statutory references are to the Penal Code.

² People with Asperger syndrome “often display behavior, interests, and activities that are restricted and repetitive and are sometimes abnormally intense or focused.” The syndrome “is characterized by qualitative impairment in social interaction, by stereotyped and restricted patterns of behavior, activities and interests, and by no clinically significant delay in cognitive development or general delay in language. Intense preoccupation with a narrow subject, one-sided verbosity, restricted prosody, and physical clumsiness are typical of the condition, but are not required for diagnosis.” (http://en.wikipedia.org/wiki/Asperger_syndrome, fns. omitted (Mar. 24, 2010).)

from threatening to use force or violence, staying away from the stalking victim, taking all prescribed medications, and completing a 180-day program at either the Institute for Mental Disorders or Landmark Medical Center. The court ordered Block to pay a \$20 court security assessment fee (§ 1465.8, subd. (a)(1)) and a \$200 restitution fine (§ 1202.4, subd. (b)). The court imposed and stayed a \$200 probation revocation restitution fine (§ 1202.44) and a \$200 parole revocation restitution fine (§ 1202.45).³ The court granted Block 32 days of custody credit and ordered her released to a representative of either the Institute for Mental Disorders or Landmark Medical Center.

On February 25, 2008, Block's probation officer filed a progress report stating that Block had complied with most conditions of probation, except that she had failed to complete the six-month program at the Landmark Center by discharging herself a month early against medical advice. The probation officer reported that Block was scheduled for a psychiatric evaluation and a medication and life skills assessment. Block told the officer that she was doing well, did not need any psychiatric evaluation, treatment, or medication, and that she was trying to get pregnant or kill herself. The officer recommended that Block undergo a psychiatric evaluation, remain under the care of a psychiatrist, and remain on probation on the same terms and conditions.

On November 26, 2008, Block stipulated to a violation of probation. A doctor at Cedars-Sinai Medical Center had filed a complaint against Block for making criminal threats. The court found Block in violation of probation, revoked, and reinstated probation, modified to require Block to pay restitution to the victim in an amount to be determined. The court conditionally released Block to a representative of Sylmar Health and Rehabilitation Center for a minimum of one year. The court advised Block that she

³ Imposition of the *parole* revocation restitution fine was error because this fine only applies when the "sentence includes a period of parole . . ." (§ 1202.45.) Section 1202.45 provides: "In every case where a person is convicted of a crime and whose sentence includes a period of parole, the court shall at the time of imposing the restitution fine pursuant to subdivision (b) of Section 1202.4, assess an additional parole revocation restitution fine in the same amount as that imposed pursuant to subdivision (b) of Section 1202.4. . . ."

Here the court granted Block *probation* which sentence did not include a period of parole.

was subject to remand if she failed to comply with prescribed medications, made attempts to leave the program, engaged in aggressive behaviors, or attempted to contact the coach in Santa Monica or the doctor at Cedars-Sinai Medical Center.

On March 12, 2009, the administrator of the Sylmar Health and Rehabilitation Center notified the court that Block had violated the terms of her probation by exhibiting aggressive and obsessive behavior toward the center's program director. Staff at the center determined that Block was not benefitting from the program, had not been compliant, and had repeated her stalking-type behavior by fixating on the center's program director. The center discharged Block in April 2009.

On July 24, 2009, the court held a probation violation hearing at which the program director testified to Block's verbal threats and the threatening and stalking-type behavior that she had engaged in while at the Sylmar Health and Rehabilitation Center. The court found Block in violation of probation and revoked probation.

On August 25, 2009, the court sentenced Block to the high term of three years in state prison with a recommendation that she be housed in a facility with mental health services. The court ordered Block to pay a \$20 court security assessment fee (§ 1465.8, subd. (a)(1)),⁴ \$350 in attorney fees, a \$500 restitution fine (§ 1202.4, subd. (b)), and a \$200 probation revocation restitution fine (§ 1202.44). The court also imposed and stayed a \$500 parole revocation restitution fine (§ 1202.45). Block did not object when the court imposed the second restitution fine in the greater amount.

Block appeals from the judgment.

DISCUSSION

Block contends the second restitution fine in the greater amount of \$500 (and companion \$500 parole revocation restitution fine) the court imposed when it sentenced

⁴ The abstract of judgment reflects that the court imposed a single \$20 court security assessment fee pursuant to section 1465.8, subdivision (a)(1). For this reason, we will assume the second fee imposed at sentencing was a reiteration of the same fee imposed on conviction.

her to state prison constituted an unauthorized sentence which was not forfeited by her failure to object. We agree.

When the court granted Block probation in 2007, it imposed a \$200 restitution fine (§ 1202.4, subd. (b))⁵ (and imposed and stayed a \$200 probation revocation restitution fine (§ 1202.44)).⁶ When sentencing Block to prison in 2009, the court imposed a \$500 restitution fine (and imposed and stayed a \$500 parole revocation restitution fine (§ 1202.45)).

Relying on *People v. Chambers* (1998) 65 Cal.App.4th 819 (*Chambers*), and *People v. Arata* (2004) 118 Cal.App.4th 195 (*Arata*), Block correctly asserts that a restitution fine may be imposed only once. *Chambers* and *Arata*, as here, involved restitution fines imposed at sentencing in amounts greater than the fines imposed on the original grants of probation. *Chambers* and *Arata* both held that a restitution fine imposed upon a grant of probation survives the probation revocation. (*Chambers, supra*, at p. 822; *Arata, supra*, at p. 202.) *Chambers* and *Arata* thus both concluded that the trial courts had exceeded their authority by imposing the second restitution fines, requiring that the second and larger fines be stricken. (*Chambers, supra*, at p. 823; *Arata, supra*, at p. 202.) Likewise here, the second restitution fine the court imposed at sentencing in an amount greater than that imposed on the grant of probation was unauthorized because the original \$200 restitution fine remained in force despite the revocation of probation.

The Attorney General essentially concedes the error, but contends Block “waived” the error by failing to object in the trial court. We disagree.

⁵ Section 1202.4, subdivision (b) provides: “In every case where a person is convicted of a crime, the court shall impose a separate and additional restitution fine, unless it finds compelling and extraordinary reasons for not doing so, and states those reasons on the record.”

⁶ Section 1202.44 provides: “In every case in which a person is convicted of a crime and a conditional sentence or a sentence that includes a period of probation is imposed, the court shall, at the time of imposing the restitution fine pursuant to subdivision (b) of Section 1202.4, assess an additional probation revocation restitution fine in the same amount as that imposed pursuant to subdivision (b) of Section 1202.4. . . .”

An exception to the “waiver” rule exists when, as here, an unauthorized sentence presents a pure question of law which is easily correctable by the appellate court. (*People v. Smith* (2001) 24 Cal.4th 849, 853 [error in imposing a parole revocation restitution fine in a different amount than the restitution fine was obvious error, easily correctable by the appellate court, and thus not waived by failure to object]; compare *People v. Tillman* (2000) 22 Cal.4th 300, 303 [error in making a discretionary sentencing choice may be forfeited by failing to object].) Further, because the sentencing error in this case is so “obvious” and “easily fixable” the “Court of Appeal may correct [the] error without remanding for further proceedings” (*People v. Smith, supra*, 24 Cal.4th at p. 854.)

DISPOSITION

The judgment is modified by striking the \$500 restitution fine imposed pursuant to section 1202.4, subdivision (b) and by striking the \$500 parole revocation restitution fine imposed pursuant to section 1202.45. The original restitution and parole revocation restitution fines of \$200 each remain in force. As so modified, the judgment is affirmed. The trial court is directed to prepare a new abstract of judgment reflecting this change and to forward it to the Department of Corrections and Rehabilitation.

NOT TO BE PUBLISHED.

ROTHSCHILD, J.

We concur:

MALLANO, P. J.

CHANEY, J.